

Message Text

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ACTION EB-07

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SUBJ: GATT WP ON CANADIAN EGG RESTRICTIONS

REF: A) STATE 237830 B) STATE 241596

BEGIN SUMMARY. WP ADJOURNED INCONCLUSIVELY. CANADA
RAISED IMPORTANT GATT QUESTIONS WHICH US MUST CONSIDER
CAREFULLY. EC, SUDDENLY EXPRESSING INTEREST IN THIS WP,
IS PLACING EMPHASIS ON BROADER IMPLICATIONS OF ANY INTER-
PRETATION OF ART. XI. BECAUSE OF THIS LATTER CONSIDERATION
AND BECAUSE PROSPECTS FOR A WP ADVISORY RULING FAVORABLE
TO US APPEAR REMOTE, US DEL AGREES THAT FURTHER
EFFORTS SHOULD BE MADE NOW TO REACH BILATERAL AGREEMENT
WITH CANADIANS. END SUMMARY.

1. AT OCTOBER 9 GATT WORKING PARTY ON CANADIAN EGG RE-
STRICTIONS, US NOTED WITH SATISFACTION LARGE OVERALL
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FLOW OF BILATERAL TRADE WITH CANADA BUT REGRETTE WE FELT

CANADIAN EGG SCHEME DID NOT COMPLY WITH GATT ART. XI REQUIREMENTS. WE RECALLED US HAD AT COUNCIL ASKED FOR WP AND NOT PANEL BECAUSE WE SOUGHT BOTH EARLY RESULT AND ADVISORY RULING INSTEAD OF ART. XXIII:2 DECISION; ADDED WE HOPED WP WOULD AID IN AMICABLE RESOLUTION OF PROBLEM. WE PRESENTED OUTLINE OF US CASE AS CONTAINED POSITION PAPER HANDCARRIED BY ANDERSON AND SDISTRIBUTED PAPER TO MEMBERS OF WP. (NOTE: WE EXCHANGED PAPERS WITH CANADIAN DEL THE DAY BEFORE).

2. US SAID CANADIAN EGG MARKETING AGENCY (CEMA) APPEARED UNABLE TO REDUCE PRODUCTION, PARTICULARLY SINCE BETWEEN 1/R AND 1/3 OF PRODUCTION IS OUTSIDE CEMA CONTROL; WE ALSO NOTED THAT ON OCT 14-17, KEY ONTARIO PROVINCE PRODUCERS WILL VOTE ON WHETHER CONTINUE PARTICIPATION IN CEMA PLAN. US SAID CANADIAN BASE PERIOD CHOSEN FOR QUOTAS IS NOT REPRESENTATIVE AND RECALLED WP HAD BEFORE IT THREE QUESTIONS: (1) WHETHER CEMA CONFORMS TO ART. XI, (2) WHETHER BASIS FOR DETERMINING IMPORT QUOTAS CONFORMS WITH LAST PARA ART. XI, AND (3) REGARDLESS OF FINDINGS ON THESE MATTERS, WHETHER PRIOR BINDING HAS BEEN IMPAIRED.

3. CANADA SIAD US ART XI COMPLAINT SEEMS RELATE TO "REDUCTION" IN LEVE OF CANADIAN EGG PRODUCTION BUT NOTED ART XI REQUIRES ONLY THAT QUANTITIES BE "RESTRICTED", NOT REDUCED. FURTHERMORE, THEY SAID THIS REINFORCED BY ANALYTICAL INDEX CLARIFICATION (INTREPRETATION OF ART XI PARA 2(C) (III)-P. 55 OF 1970 EDITION) WHICH SAYS ESSENTIAL POINT IS THAT "RESTRICTION MUST EFFECTIVELY KEEP DOMESTIC OUTPUT BELOW THE LEVEL WHICH IT WOULD HAVE ATTAINED IN THE ABSENCE OF RESTRICTIONS". WITH RESPECT TO BASE PERIOD, CANADA SIAD 1874 WOULD BE UNREPRESENTATIVE YEAR; IN ANY EVENT, QUOTA WAS 20 PERCENT HIGHER THAN 1979-73 BASE WOULD CALL FOR.

4. CANADA SAID REAL QUESTION WAS WHETHER THERE IS ANY IMPAIRMENT AND OUTCOME ON FIRST TWO US QUESTIONS WOULD RENDER THIRD QUESTION IRRELEVANT. LOGIC OF THIS UNCLEAR TO LIMITED OFFICIAL USE

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US. CANADA OFFERED PRODUCE A PAPER LATER TO ADDRESS POINTS RAISED BY US PAPER. THEY NOTED EGG TRADE IS CYCLICAL AND HIGHLY SENSITIVE TO PRICE CHANGES IN U.S.

5. AUSTRALIA NOTED THAT IMPORT STATISTICS SHOW WIDE FLUCTUATIONS THROUGH THE YEARS AND ASKED THOROUGH EXPLANATION THIS ASPECT. THEY ADDED CANBERRA FINDS WP TASK OF INTERPRETING ART XI A MATTER OF GREAT SERIOUS-

NESS AND INDICATED THEY WOULD HAVE TO CAREFULLY CHECK WITH OWN CAPITAL AT EACH STAGE OF WP'S DELIBERATIONS. THEY ASKED WHETHER US IS TYING OUR GATT CASE TO

REDUCTION OR RESTRICTION, PER PARA 3 ABOVE. WE PROMISED CONSULT WASHINGTON ON POINT.

6. EC (SIMONET) RECALLED THEIR COUNCIL STATEMENT THAT PANEL, NOT WP, SHOULD HAVE BEEN SET UP BUT SAID THEY HAD LEGITIMATE STAKE IN WP PROCEEDINGS BECAUSE THEY WERE LARGEST SUPPLIER OF POWDERED EGGS TO CANADA. SIMONET SAID WP HAD IMPLICATIONS FAR BEYOND EGG CASE, INCLUDING FOR MTN, AS IT DEALT WITH EXCLUSIVITY OF AGRICULTURE. HE THEN GAVE INCOHERENT DISCOURSE ABOUT HOW AGRICULTURAL SUB-GROUPS IN MTN HAD DETERMINING AUTHORITY. HE SAID CANADIAN EGG CONTROL SCHEME DEALT WITH ATTEMPT BY A SOVEREIGN GOVERNMENT TO REGULATE OWN AGRICULTURAL OUTPUT AND THUS IMPAIRMENT OF A CONCESSION WAS NOT PROPER SUBJECT FOR DISCUSSION IN THIS CONTEXT. THEREFORE, SAID SIMONET, WP COULD NOT ACCEPT TASK OF JUDGING IMPAIRMENT.

7. U.S. SAID HE HAD NOTED EC PREFERENCE FOR A PANEL BUT WERE SUBSEQUENTLY SURPRISED TO LEARN EC HAD STATED IN MTN SUB-GROUP (STANDARDS) THAT THEY DID NOT WANT PANELS AND THUS WE WERE CONFUSED OVER WHETHER EC DOES OR DOES NOT WANT PANELS FOR DISPUTE SETTLEMENT. WE SAID AP HAD NO AUTHORITY OVER MTN; IT WAS UP TO TNC ALONE TO DETERMINE MTN ORGANIZATION. FINALLY, WE READ OUT COUNCIL-APPROVED TERMS OF REFERENCE OF WP, WHICH BY INCLUSION OF U.S. REQUEST (L/4223) HAD ACCEPTED TASKS 1,2, AND 3. THEREFORE, QUESTION OF TAKING UP IMPAIRMENT MATTER HAD ALREADY BEEN SETTLED
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BY HIGHER AUTHORITY, AND WP WAS NOT FREE TO DECIDE WHETHER IT COULD REJECT QUESTION ON IMPAIRMENT. CHAIR RULED EC OUT OF ORDER ON LATTER POINT.

8. WP ADJOURNED IN ORDER GIVE MEMBERS TIME TO REFLECT ON US PAPER AND CONSULT CAPITALS AND CANADA TIME TO PREPARE RESPONDING PAPER. WP MIGHT RECONVENE WEEK OF OCT 27-31 IF DISPUTE HAS NOT BEEN RESOLVED BY THEN.

9. U.S. DEL RECOMMENDS WASHINGTON FOCUS CAREFULLY ON CANADIAN LEGAL QUESTION RAISED IN PARA 3 ABOVE. CANADIANS APPEAR CORRECT THAT ART XI DOES NOT REQUIRE "REDUCTION" IN PRODUCTION BUT MERELY REQUIRES RESTRICTION. U.S. MAY WISH ALSO CLARIFY WHETHER WE TIE OUR

CASE ON ART. XI TO PARAS 2(C)(I) OR (II).
LATTER DEALS WITH REMOVAL OF A TEMPORARY SURPLUS, WHILE
FORMER RUNS RISK OF SANCTIONING A PERMANENT QR. IF WP
IS TO CONTINUE, WE REQUEST WASHINGTON SEND CLARIFICATIO
OF THESE AND ANY OTHER PERTINENT GATT LEGAL POINTS SUFFICIENTLY
IN ADVANCE RPT IN ADVANCE FOR US TO REFLECT
AND MAKE COMMENTS TO WASHINGTON. THUS, WE WOULD NEED
A CABLE EARLY IN WEEK OCT 20.

10. AFTER MEETING, PHILIPS OF CANADIAN MISSION URGED WE
ATTEMPT RESOLVE EGG ISSUE BILATERALLY. THIS SENTIMENT
ALSO REFLECTED LATER BY EASTHAM, CLARK, STONE OF CANA-
DIAN DEL, WHO RECOMING CONCERNED THAT WP MAY, IN COURSE
OF PROTRACTED DELIBERATIONS, UNWITTINGLY DO SOMETHING
TO BLESS THE EC'S CAP. GHOULISH PRESENCE OF EC ALLY ON THIS
EGG ISSUE IS CLEARLY SOMETHING THEY DON'T WANT.

1. AT THIS POINT, WE SUSPECT WP WILL CONSIDER OUR GATT
CASE INCONCLUSIVE. IN ANY EVENT, WE SERIOUSLY DOUBT ABILITY OF WP
TO REACH UNANIMOUS CONCLUSIONS ON ANY OF THE QUESTIONS, BECAUSE OF
POLITICAL ASPECTS. US
HAS NOW HAD SOME AIRING OF THIS ISSUE IN GATT. US
DEL SHARES CANADIAN CONCERNS OVER IMPLICATIONS
OF INTERPRETATION ART XI. IF WE CONTINUE
THIS ROUTE, WE WILL CERTAINLY CRACK INTO SOMETHING
LARGER THAN EGGS.
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12. WE NOTED IN REFTTEL (B) THAT BILATERAL DISCUSSIONS
ARE RESUMING AND AGREE THAT FURTHER EFFORTS SHOULD BE
MADE NOW TO REACH BILATERAL AGREEMENT. ABRAMS

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